IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7538 OF 2006

Krishna Avaba Mane
& Ors. .. Petitioners.

vs.

The Election Officer,
Warna Valley Sahakari Kharedi
Vikri Sangh Ltd., Islampur
& Ors. . .. Respondents.

Mr. Y.S. Jahagirdar, Sr. Counsel with Mr. M. M. for petitioners.
Mr. Umesh Mankapure for respondent no. 4.
Mr. N.V. Walawalkar, Sr. Counsel with Mr. Rupesh Babade for Respondent No. 12.

CORAM : A.P. DESHPANDE, J.

DATE : 17th November, 2006.

P.C. :

. The respondent no. 4 is a specified society and in the course of the process of election to the Managing Committee of the said respondent the present petitioners filed their nomination forms. The election has been declared by the Collector, whereas the respondent no. 1 is the returning

officer. At the time of scrutiny the respondent no. 1 rejected the nomination forms of the petitioners and aggrieved by the said decision of rejection, the petitioners preferred an appeal before the Respondent No. 2. The appeal has been dismissed as the appellate authority concurred with the view taken by the returning officer. The orders passed by the returning officer and the Commissioner are challenged by filing the present petition.

2. One of the relevant clauses in the Bye law is, namely, Bye Law No. 32 (3). The said clause lays down a condition of eligibility to contest the election as members of the Board of Directors of the Society. Under the said clause a person is eligible if he supply the personal agricultural produce of a minimum of Rs. 200/- to the adat shop run by respondent no. 4 society. It further lays down that if the population of the village is less than 2000 then supply of the food grains / agricultural produce has to be 10 carts and for a person from a village having population of more than 2000 the supply has to be of 20 carts of agricultural produce. Admittedly the said condition is not complied with by the present petitioners inasmuch as they had not supplied any agricultural produce or food grain during the relevant period to the adat shop of respondent no. 4 society.

3. The submission on behalf of the petitioners is that the entire land in the region being fully irrigated, only sugar cane crop is produced and hence there is no question of supply of agricultural produce to the adat shop of respondent no. 4. It is next contended that the adat shop at Islampur was closed down and hence the said condition of eligibility comprised in Bye law No. 32 (3) has become redundant by passage of time. Both the submissions are rejected by the authorities below on appreciation of material on record, which includes the annual report for the year 2005-06 published by the respondent no. 4 society, indicating sale and purchase of agricultural produce/seeds from the Islampur shop being in the sum of Rs. 4,40,123/- whereas the commission earned is shown to be in the sum of Rs. 28,103/-. It is also observed by the authorities below that had the shop been closed, the nomination papers of other candidates, at the touch-stone of Bye Law No. 32 (3), would also have been rejected but the said nominations are found to be in order as they had supplied the agricultural produce.

4. The election programme is almost on the verge of completion and what is left to be done is casting of votes if need be on 4.12.2006. There is no patent illegality and/or miscarriage of justice requiring interference in exercise of 227

jurisdiction. The challenge raised in this petition cannot be adjudicated without obstructing or halting the election process, which is wholly impermissible in law. There is alternative efficacious remedy available for the petitioners to call in question the election after declaration of results.

5. Hence, the writ petition is summarily dismissed. It is clarified that it shall be open for the petitioners to avail of the remedy of election petition.

(A.P. Deshpande, J.)